

FILED
COURT OF APPEALS
DIVISION II

2015 OCT 26 AM 9:31

STATE OF WASHINGTON

IN THE WASHINGTON STATE COURT OF APPEALS BY *km*

DEPUTY

DIVISION II

CASE NO. 45444-7-II

STATE OF WASHINGTON

Respondent

vs.

KEVIN WAYNE WILLIAMS

Petitioner / Appellant

DISCRETIONARY REVIEW FROM THE LEWIS COUNTY
SUPERIOR COURT

PETITIONER'S / APPELLANT'S REPLY BRIEF

By: Kevin Wayne Williams

Pro se Petitioner / Appellant

Register # 60078-019

Federal Correctional Institution FCI T.I.

P.O. Box 3007

Terminal Island California 90733

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
A. SETTING AND/OR ESTABLISHING FACTS FOR THE RECORD ON REVIEW	1
B. ARGUMENTS	5
ARGUMENT 1 DISPLAY OF FIREARM ON SECOND STORY BALCONY OR DECK	5
ARGUMENT 2 DISPLAY OF FIREARM IN DRIVEWAY	8
(a) ADDRESSING (3) IN A MANNER	10
ARGUMENT 3 REMAINING ARGUMENTS IN OPENING BRIEF	14
CONCLUSION	14

TABLE OF AUTHORITIES

WASHINGTON STATE CASES

STATE V HALEY, 35, Wn. App. 96, 97-98.665 P.2d 1375 (1983)	7
CITY OF REDMOND V MOORE, 151 Wn. 2d 664, 668-69, 91 P.3d 875 (2004)	8, 9
STATE V OWENS, 180 Wn. App. 324 P. 3d 157 (2014)	7, 8
STATE V WATSON, 160 Wn. 2d 6, 154 P. 3d 904 (2007)	9
STATE V WILLIAMS, 144 Wn. 2d 197, 203, 26 P. 3d 890 (2001)	9

WASHINGTON STATE CODES AND/OR STATUTES

RCW 9.41.270	6, 7, 9, 10
RCW 9.41.270(1)	6, 10
RCW 9.41.270(3)(a)	6, 8

WASHINGTON STATE COURT RULES

RAP RULE 2.5	5
RAP RULE 2.5(a)	5
RAP RULE 2.5(4)(1)	5
RAP RULE 2.5(a)(2)	5
RAP RULE 2.5(a)(3)	5

CONSTITUTIONS

WASHINGTON STATE CONSTITUTION	12
UNITED STATES CONSTITUTION	12

1 A. SETTING AND/OR ESTABLISHING FACTS FOR THE RECORD ON REVIEW

2 Prior to prosecuting attorney Eisenbergs involvement in this case, both the
3 Plaintiff/Respondent and the Defendant/Petitioner/Appellant adhered to the facts
4 and the truth when submitting arguments, claims, and/or filings. The honesty of
5 all parties was even commended by the Honorable Judge Buzzard during the
6 October 11, 2011 hearing. See CP 145 Lines 15 thru 20.

7 For reasons unknown, prosecuting attorney Eisenberg has now found it important
8 and/or necessary to provide comments and/or statements that are contradicted by the
9 record, misleading, and/or knowingly false. Prosecuting attorney Eisenberg has
10 as well decided to grossly alter and/or exaggerate the language when referencing
11 the Clerks Papers.

12 In order to set and/or establish the facts for the record, the Petitioner/Appellant
13 wishes to address a few of prosecuting attorney Eisenbergs comments, statements,
14 and/or references.

15 1) Respondent Brief Page 1 Last Line thru Page 2 First Line: Williams came out onto
16 his second story porch and yelled at the woman about what the hell she was doing.
17 CP at 17.

18 Clerks Papers At 17: Once on the balcony Williams immediately looked down to the
19 area of his front door where he noticed an unknown woman. . . . Mr Williams asked
20 what the hell are you doing?

21 2) Respondent Brief Page 2 Line 9 thru 11: Mr Williams exited his house and armed with a
22 rifle followed the woman 100 feet down to the street where her car was. CP at 18-19

23 Clerks Papers At 18-19: Mr Williams followed his friend out the front door, grabbing
24 a 30 caliber rifle which Mr Williams kept pointed towards the ground at all times.
25 Mr Williams walked approximately 100 feet out his front door and up the driveway.

26 3) Respondent Brief: Page 2 Line 14 into 15: Williams claimed that he threatened her at
27 gunpoint in self-defense. CP at 17-19, 76.

28 Clerks Papers At 17-19, 76: Nowhere in the Clerks Papers and/or anywhere else

1 does the Petitioner / Appellant claim to have threatened anyone. Nowhere in the
2 Lewis County Sheriff's Detailed Incident Report, the taped testimony of the process
3 servers, or anywhere else does either process server and/or witness claim to be
4 threatened at gunpoint.

5 4) Respondent Brief Page 2 Footnote 2 At Bottom of Page: Mr Williams continues to
6 make this claim, even though he is in federal prison for blowing up his own
7 mailbox as part of a scheme to defraud witnesses in a federal case. See CP at
8 11-14 (Docket Entries of 10-29-10, 3-16-11, 5-16-11, 9-21-11, and 10-11-11)
9 Clerks Papers At 11-14: This is the Docket Sheet for Lewis County District Court Case
10 No. 84-109. Each of the Docket Entries provided by the prosecutor are pertaining
11 to and/or associated with the scheduling and/or rescheduling of telephonic hearings.
12 None of the Docket Entries provided by the prosecutor mention and/or establish
13 what federal charges, convictions, and/or sentences were placed on the Petitioner /
14 Appellant. None of the Petitioners / Appellants federal charges, convictions, and/or
15 sentences pertain to whether or not the state of Washington has the jurisdiction
16 and/or power to prosecute, convict, and sentence me, or whether or not defense
17 counsel was ineffective, or whether or not the lower courts abused their discretion.
18 Important Fact: Even though nothing in the Petitioners / Appellants federal case
19 is relative to this case, in counter to the prosecutors comments and/or statements,
20 the Petitioner / Appellant won on direct appeal in the Ninth Circuit Court of Appeals
21 and is currently petitioning the United States Supreme Court. The Petitioner /
22 Appellant does and will always claim that he is innocent of all the federal charges.

23 5) Respondent Brief Page 2 Footnote 2 At Bottom of Page: Mr Williams also asserted more
24 than once that he had essentially no criminal history other than a DUI in 1995,
25 despite having dozens of prior convictions. CP 53, 77, 81, 92
26 Clerks Papers At 53: On this day, aside from a number of traffic violations earlier in
27 his life, Mr Williams was 43 years old and the only real issue of criminal behavior
28 was a D.U.I. that he received in 1995.

1 Clerks Papers At 77: The only thing that I can add your honor would be prior to this
2 instance I've been 13 years of any contact whatsoever. I've always been a law
3 abiding citizen. I say prior to this the only thing I'd ever been in trouble
4 for pretty much was a DVI that I received in 1995..

5 Important Fact: CP At 77, in response to the above comment and/or statement
6 by the Petitioner / Appellant, the Honorable Commissioner provides: You actually
7 have a very, very lengthy criminal history but a lot of it is very old.

8 Clerks Papers At 81: The Petitioner / Appellant doesn't assert anything as this is a
9 document filed by the prosecution

10 Clerks Papers At 92: As is stated in the Defendants original motion, as of the
11 time of this incident the defendant has been convicted of a D.V.I. in 1995 and a
12 large number of driving violations.

13 Important Fact: The Petitioner / Appellant never asserted and/or claimed that he had
14 no criminal history. The Petitioner / Appellant simply asserted and/or claimed that he
15 had gone 13 years and/or since his 1995 DVI without getting in trouble with the
16 police.

17 6) Respondent Brief Page 3 Line 17 into 19: At the hearing on the matter, the State
18 pointed out that even in Mr. Williams' version of the facts, he did not qualify for the
19 statutory defenses. CP at 138-40. The district court agreed

20 Clerks Papers At 138-140: Nowhere in the Clerks Papers or anywhere else does the
21 Lewis County District Court agree, decide, mention, order, and/or rule that the
22 Petitioner / Appellant did not qualify for the statutory defenses.

23 7) Respondent Brief Page 7 Line 1 into 3: On the contrary, his own account demonstrates
24 that, after shooting a warning shot at a process server to scare her, ... CP at 17-19
25 Clerks Papers At 17-19: ... With the pistol in his hand and unholstered he yelled down to
26 the woman, who now was 25 feet from the door, and warned her that if she didn't
27 return and remove the plastic sack from his door he would not hesitate to fire his
28 weapon. ... Mr Williams realized that his request was be (ing) ignored, and without

PETITIONERS / APPELLANTS
REPLY BRIEF

1 knowing what truly was in the plastic sack attached to his door, decided to discharge
2 his firearm. With this woman walking up the driveway to Mr Williams' left, Mr
3 Williams turned his firearm far to his right and fired into a dirt creek bed
4 roughly 100 feet away, 180 degrees opposite the direction that the woman was
5 walking. The decision to discharge the firearm was to serve two purposes, the
6 most important being for her to realize that Mr Williams was very serious in what
7 he wanted her to do. The second reason, and the reason Mr Williams decided to
8 fire into the creek bed, was because from the moment she originally turned and
9 began walking up my driveway, to the discharge of the weapon, she never looked
10 up at Mr Williams to see if he truly had a firearm. So it was the belief of Mr
11 Williams that once she realized that he did have a weapon, and was willing to use
12 it, she would then turn around and remove the plastic bag.

13 Important Fact: The Petitioner / Appellant never "shot" at anyone and the
14 Petitioner / Appellant didn't discharge his firearm to scare anyone, he discharged
15 his firearm in order to compel compliance.

16 8). Respondent Brief Page 10 Footnote 5 At Bottom Of Page: Defense counsel may have
17 concluded that Mr Williams would not be a credible witness. That belief is
18 consistent with the facts now known. Mr Williams' self-defense claims make
19 little sense if he blew up his own mailbox and he misrepresented his criminal
20 history during this case.

21 Very Important Fact: The prosecutors comments and/or statements are contradicted
22 and/or washed out by the chronological order of things. The Petitioner / Appellant
23 wasn't even charged for blowing up his own mailbox until June of 2010, more
24 than 1 year after his Alford Plea was accepted, and defense counsel would
25 not have had to worry whether or not the Petitioner / Appellant was a credible
26 witness, because the only other evidence that the prosecutor offers is the
27 alleged misrepresentation of criminal history which became part of the case
28 at the post trial stage during sentencing.

1
2
3 B. ARGUMENTS

4 RAP RULE 2.5 - Circumstances Which May Affect Scope Of Review

5 (a) - Errors Raised For First Time On Review. The appellate
6 court may refuse to review any claim of error which was not raised in the trial
7 court. However, a party may raise the following claimed errors for the first time
8 in the appellate court:

9 (1) - lack of trial court jurisdiction

10 (2) - failure to establish facts upon which relief can be granted

11 (3) - manifest error affecting a constitutional right.

12 In the Respondents Brief under Argument 1, the state attorney has misapplied,
13 misconstrued, and/or misunderstood the arguments and/or claims previously raised by the
14 Petitioner / Appellant. Although the Petitioner / Appellant does argue and/or claim
15 that the State lacked the jurisdiction to prosecute, convict, and sentence the
16 Petitioner / Appellate, the reasons, specifics, and/or theories provided by the state
17 attorney are mislabeled and/or incorrect. See Respondents Brief Page 5 First 4 1/2
18 Lines Of Argument 1.

19 Further into Argument 1 the state attorney provides that although the Petitioner / Appellant
20 uses the word jurisdiction, his argument is not really a jurisdictional challenge. See
21 Respondents Brief Page 6 Line 9 into 11.

22 In order to clear up any and/or all confusion, the Petitioner / Appellant will breakdown
23 his arguments and/or claims in a way that should allow the Honorable Court and the
24 state attorney to understand the issues.

25 ARGUMENT 1

26 DISPLAY OF FIREARM ON SECOND STORY BALCONY OR DECK

27 In Lewis County Washington, the decision whether or not to charge an individual
28 within Lewis County is vested in the Lewis County Prosecutor. In order for the
Lewis County Prosecutor to legally and/or legitimately charge an individual for an

1 unlawful act, that individuals actions and/or conduct must violate a Washington State
2 Code and/or a Washington State Statute. The Lewis County Prosecutor lacks the power
3 to prosecute an individual under a Washington State Code and/or Washington State
4 Statute if it contains an exception and/or exemption that allows, permits, and/or
5 protects the individuals actions and/or conduct. If the Lewis County Prosecutor lacks
6 the power to prosecute an individual under a Washington State Code and/or Washington
7 State Statute, then the Washington State Courts in and/or for Lewis County lack
8 the jurisdiction to convict and sentence that individual under that Washington State
9 Code and/or Washington State Statute.

10 It is uncontested and/or undisputed that the Lewis County Prosecutors charged the
11 Petitioner / Appellant for a violation of RCW 9.41.270. See CP At 5 and 6

12 It is uncontested and/or undisputed that the Lewis County District Court entered a
13 conviction, judgment, and sentence against the Petitioner / Appellant for a violation
14 of RCW 9.41.270. See CP At 36 and 37. See CP At 111 thru 114.

15 It is uncontested and/or undisputed that the Petitioner / Appellant possessed and/or
16 displayed a firearm while standing on the second story balcony of his house. See CP At
17 6 Line 2. See CP At 17 Line 1 thru 19 Line 20. See CP At 117 Line 20 thru 25
18 See CP 170 Line 27 thru 171 Line 8.

19 RCW 9.41.270 (1) Reads: It shall be unlawful for any person to carry, exhibit, display,
20 or draw any firearm, dagger, sword, knife, or other cutting or stabbing instrument, club,
21 or any other weapon apparently capable of producing bodily harm, in a manner, under
22 circumstances, and at a time and place that either manifests an intent to intimidate
23 another or that warrants alarm for the safety of other persons. See Appendix 1

24 RCW 9.41.270 (3)(a) Reads: subsection (1) of this section shall not apply to or affect
25 the following: Any act committed by a person while in his or her place of abode or
26 fixed place of business. See Appendix 1. This is clearly an exception and/or
27 exemption that was intentionally put in place by the Washington State Legislature
28 when constructing RCW 9.41.270.

1 In State v Haley, 35 Wn. App. 96, 97-98, 665 P.2d 1375 (1983), Division Three of
2 the Washington State Court of Appeals applied the ordinary meaning of "abode" and
3 determined that "[t]he ordinary meaning of abode is: one's home, place of dwelling,
4 residence, and/or domicile." Haley, 35 Wn. App. at 98. It then held that "the [attached]
5 deck was an extension of the dwelling and therefore a part of the abode." Haley, 35 Wn. App.
6 at 98. See State v Haley, 35 Wn. App. 96, 97-98, 665 P.2d 1375 (1983).

7 In State v Owens, 180 Wn. App. 324 P.3d 757 (2014), Division Two of the Washington
8 State Court of Appeals determined that Rew 9.41.270 does not define the term "abode".
9 Therefore, the Court gave the term its plain and ordinary meaning ascertained from a standard
10 dictionary. Webster's Third New International Dictionary 4 (1969) defines "abode" as "place where
11 one abides or dwells" and lists "residence" and "home" as synonyms. See State v Owens Case No
12 43702-3-II.

13 In State v Owens, Division Two of the Washington State Court of Appeals discusses the
14 above definition of "abode" that was provided by Division Three in State v Haley, and their
15 determination that "the [attached] deck was an extension of the dwelling therefore part of the
16 abode." See State v Owens Case No 43702-3-II.

17 When making their final determination as to the exception and/or exemption under Rew
18 9.41.270(3)(a), Division Two of the Washington State Court of Appeals provided the following:
19 "Here, it is undisputed that Owens was neither inside his residence nor on a structure attached
20 to his residence when he unlawfully displayed his rifle to police." See State v Owens Case No
21 43702-3-II.

22 The Petitioner / Appellant hereby submits that in State v Owens, Division Two of
23 the Washington State Court of Appeals accepted and/or determined that a structure
24 attached to a dwelling, home, and/or residence is considered an extension of the
25 dwelling, home, and/or residence and therefore part of the abode.

26 As was stated earlier in this argument, it is uncontested and/or undisputed that the
27 Petitioner / Appellant possessed and/or displayed a firearm while standing on the second story
28 balcony of his dwelling, home, and/or residence. Accordingly, under the holding in Haley and

Owens, Rew 9.41.270(3)(a) is applicable to the possession and/or display that transpired on the second story balcony.

Ultimately, this means that the Lewis County Prosecutor lacked the power to prosecute the Petitioner / Appellate for possession and/or display of a firearm while on his second story balcony and the Washington State Courts in and for Lewis County lacked the jurisdiction to convict and sentence the Petitioner / Appellate for possession and/or display of a firearm while on his second story balcony.

ARGUMENT 2

DISPLAY OF FIREARM IN DRIVEWAY

In Lewis County Washington, the decision whether or not to charge an individual within Lewis County is vested in the Lewis County Prosecutor. In order for the Lewis County Prosecutor to legally and/or legitimately charge an individual for an unlawful act, that individual's actions and/or conduct must violate a Washington State Code and/or a Washington State Statute. The Lewis County Prosecutor lacks the power to prosecute an individual under a Washington State Code and/or a Washington State Statute if it contains language that is interpreted to allow, permit, and/or protect the individual's actions and/or conduct, or if it contains language that fails to define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed. If the Lewis County Prosecutor lack the power to prosecute an individual under a Washington State Code and/or a Washington State Statute, then the Washington State Courts in and for Lewis County lack the jurisdiction to convict and sentence that individual under that Washington State Code and/or Washington State Statute.

"An as-applied challenge to the constitutional validity of a statute is characterized by a party's allegation that application of the statute in the specific context of the party's actions or intended actions is unconstitutional." City of Redmond v Moore, 151 Wn. 2d 664, 668-69, 91 P. 3d 875 (2004). "Holding a statute unconstitutional as applied prohibits future application of the statute in a similar context, but the statute is not totally invalidated."

1 Moore, 151 WA. 2d at 669.

2 A statute is void for vagueness if (1) it does not define the criminal offence with
3 sufficient definiteness that ordinary people can understand what conduct is proscribed or
4 (2) it does not provide ascertainable standards of guilt to protect against arbitrary
5 enforcement. State v Watson, 160 WA. 2d 6, 154 P. 3d 809 (2007) quoting State v Williams,
6 144 WA. 2d 197, 203, 26 P. 3d 890 (2001).

7 Within his Opening Brief, the Petitioner/Appellant clearly argues and/or claims that
8 his actions and/or conduct was allowed, permitted, and/or protected by the exceptions
9 and/or exemptions contained within the charged RCW's and by the language used
10 and/or contained within the charged RCW's. See Defendants / Petitioners Opening Brief
11 Page 6 Line 3 thru 5

12 It is uncontested and/or undisputed that the Lewis County Prosecutor charged the
13 Petitioner/Appellant for a violation of RCW 9.41.270. See CP At 5 and 6

14 It is uncontested and/or undisputed that the Lewis County District Court entered a
15 conviction, judgment, and sentence against the Petitioner/Appellant for a violation of
16 RCW 9.41.270. See CP At 36 and 37 See CP At 111 thru 114

17 It is uncontested and/or undisputed that the Petitioner/Appellant possessed and/or displayed
18 a firearm while standing in his driveway. See CP At 18 Last Part of Line 28 thru Page 19
19 Line 1 into 3; See Appendix 2 Page 2 Middle Of Page, Page 6 Top Of Page, Page 6 Top
20 Of Page

21 The Petitioner/Appellant submits that it is vitally important for the Honorable Court to
22 compare the Declaration of Defendant that was filed with the original Motion To Withdraw
23 Plea Of Guilty to the testimony that was provided to the Lewis County Sheriff's Office
24 by both process servers. Compare CP At 17 Line 1 thru 19 Line 20 to Appendix 2

25 It is important to notice that the Petitioners / Appellants account of what transpired
26 is nearly identical to the two process servers' account of what happened. In fact,
27 there are really only two differences. The first, is the process servers fail to mention
28 and/or discuss the multiple No Trespassing signs posted between the locked gate and

PETITIONERS / APPELLANTS
REPLY BRIEF

1 and the house. The second, is the process servers claim that the Petitioner / Appellant
2 possessed and/or displayed a rifle while on the second story balcony when in fact
3 it was a .380 caliber pistol. Compare CP At 17 Line 1 thru 19 Line 20 To Appendix 2

4 RCW 9.41.270 (1) Reads: It shall be unlawful for any person (1) to carry, exhibit, display
5 or draw any (2) firearm, dagger, sword, knife or other cutting or stabbing instrument, club
6 or any weapon apparently capable of producing harm, (3) in a manner, (4) under
7 circumstances, (5) and at a time and place (6) that either manifests an intent to
8 intimidate another or that warrants alarm for the safety of other persons.

9 In order to be charged, prosecuted, convicted, and sentenced under RCW 9.41.270, the
10 Petitioners / Appellants actions and/or conduct must not be allowed, permitted, and/or
11 protected by an exception and/or exemption, and must offend and/or violate each
12 of the six categories provided above.

13
14 (a)

15 ADDRESSING (3) IN A MANNER

16 The State Of Washington and/or its attorneys, must establish that the Petitioner/
17 Appellant displayed a firearm, [in a manner], under circumstances, and at a time and
18 place that either manifests an intent to intimidate another or that warrants alarm for
19 the safety of other persons.

20 In the Respondents Brief, the state attorney provides: Mr Williams exited his house
21 and armed with a rifle, followed the woman 100 feet down to the street where her
22 car was. See Respondents Brief Page 2 Line 9 thru 11. Although the Petitioner / Appellant
23 contests and/or disputes that he followed the woman to her car, the state attorney
24 doesn't provide as to what part of the Petitioners / Appellants actions and/or conduct
25 after exiting the house with a firearm was [in a manner], under circumstances,
26 and at a time and place that either manifests an intent to intimidate another or
27 that warrants alarm for the safety of other persons.

28 The state attorney then provides: Mr Williams claimed that he threatened her at

1 gunpoint in self defense. See Respondents Brief Page 2 Line 14 thru 16. Nowhere in the
2 Clerks Papers and/or anywhere else does the Petitioner / Appellant claim to have
3 threatened anyone at gunpoint, nor does either process server claim to be
4 threatened at gunpoint. See CP and Appendix 2.

5 The state attorney further provides: he left his house and followed her 100 feet
6 down towards her car while wielding a firearm. CP at 12-14. The act criminalized
7 was not his possession of a firearm, but his threatening use of it without sufficient
8 justification. See Respondents Brief Page 7 Line 3 into 6. Once again the state
9 attorney fails and/or refuses to provide as to what part of the Petitioners / Appellants
10 actions and/or conduct after exiting the house with a firearm was [in a manner],
11 under circumstances, and at a time and place that either manifests an intent to
12 intimidate another or that warrants alarm for the safety of other persons.

13 The state attorney goes on to provide: Mr Williams wielded a weapon outside his place
14 of abode, pursuing a process server down to her car. See Respondents Brief Page 9
15 Line 11 thru 12. Again the state attorney fails and/or refuses to provide any details
16 as to how the Petitioners / Appellants actions and/or conduct after exiting the house
17 with a firearm was [in a manner], under circumstances, and at a time and place that
18 either manifests an intent to intimidate another or that warrants alarm for the
19 safety of other persons.

20 In his final mention of the firearm outside the house, the state attorney provides: Mr
21 Williams then followed her, wielding a weapon under circumstances creating concern for others'
22 safety. Cf RCW 9A.41.270(1) (Criminalizing the exhibit or display of a firearm under
23 circumstances "warrant[ing] alarm for the safety of other persons"). See Respondents
24 Brief Page 10 Line 17 thru Page 11 Line 2. As before, the state attorney fails and/or
25 refuses to explain how and/or at what point the Petitioners / Appellants actions and/or
26 conduct after exiting the house with a firearm was [in a manner], under circumstances,
27 and at a time and place that either manifests an intent to intimidate another or
28 that warrants alarm for the safety of other persons.

1 Halfway through the Respondents Brief the state attorney starts using the words
2 "wielded" and/or "wielding" when describing the way that the Petitioner/
3 Appellant exited the house with the firearm. As mentioned earlier in this
4 argument, the state attorney in his final mention of the firearm outside the
5 house, provides a portion of the language that is contained within RCW 9A.41.270.
6 However, the Washington State Constitution and the United States Constitution
7 require more than fancy words and legislative language to charge, prosecute,
8 convict, and sentence an individual.

9 Pertaining to the alleged unlawful display of a firearm charge under RCW
10 9A.41.270, the state attorney currently handling the case has based and/or
11 structured his entire argument on self-serving assumptions and/or speculation.
12 There are absolutely no facts, no evidence, no information, no material, and/or
13 anything anywhere within the record of the courts that support the state
14 attorneys argument.

15 The Petitioner / Appellant clearly provides and/or states that when he exited the
16 house with the firearm, he had the barrel of the firearm pointed at the ground
17 "at all times". See CP At 18 Last Word in Line 28 thru 19 Line 1 into 2.

18 In the Lewis County Sheriffs Detailed Incident Report, when asked about the
19 Petitioners / Appellants possession and/or display of the firearm outside the house
20 and/or in the driveway, the male process server provided:

21 A. "then he came out of the house with a rifle and walked up within 40 or 45
22 feet of us and just was screaming at us to get off his property ... he didn't
23 aim the gun at us. He had it just cocked in his arm."

24 Q. "So where um, when you see him with the um uh what you're describing as
25 a rifle, Rod, where is the barrel of the gun pointed?"

26 A. "when he come up through the yard, I mean, he didn't stick it up to
27 his shoulder or something and point it at us. He just had it cocked in his arm
28 sort of like this, you know, pointing towards the, basically towards the ground."

PETITIONER / APPELLANTS
REPLY BRIEF

1 SEE Appendix Z Page 5 Top of Page.

2 In the Lewis County Sheriff's Detailed Incident Report, when asked about
3 the Petitioners/Appellants possession and/or display of the firearm outside the
4 house and/or in the driveway, the female process server provided:

5 Q. "So where's the barrel of the rifle pointed?"

6 A. "I couldn't see the barrel of the rifle. My back was turned. I was
7 walking back towards the car."

8 Q. "When you were in your car was he still walking towards your car or had
9 he stopped in the yard?"

10 A. "I believe he was walking up the driveway. I don't know how far up
11 the driveway he was but she" (meaning the girl that was taking pictures)
12 was right there by the car."

13 Q. "At that point did he still have the rifle?"

14 A. "He had the rifle but I, to be honest with ya, I was just like lets go."

15 SEE Appendix Z Page 7 Bottom of Page thru Page 8 Top of Page.

16 In the Lewis County Sheriff's Detailed Incident Report, when asked about
17 how she felt and/or what kind of emotional state she was in, the female
18 process server provided:

19 Q. "Okay. And um basically Virginia, tell me how you felt or perhaps what kind
20 of emotional state you were in when you heard what sounded like a gunshot
21 and when you um saw this person or believed this person was in possession
22 of a firearm?"

23 A. "Well I was afraid enough that I went back to the door and got the papers
24 cuz he told me to cuz I was afraid if he shot once that he might shoot and
25 hit me. I mean he'd have to be a pretty bad shot not to get me at that
26 close range so. Obviously I think the first time he shot away from me but I,
27 I wasn't going to take a chance so that's why I picked up the papers like
28 he told me but I, I didn't pick em up after I put em in the van. I just

1 kept walking and I thought at this point Im, you know, he was running
2 downstairs, running down, cuz he had to go down a flight of stairs so.

3 Q. "Would you like to add anything else to your statement Virginia?"

4 A. "No, I think thats pretty well it." SEE Appendix 2 Page 9 Top Of Page.
5 into Middle Of Page.

6 The statements and/or testimony provided by the process servers in the
7 Lewis County Sheriffs Detailed Incident Report contradicts the entire
8 argument provided by the state attorney pertaining to and/or associated
9 with the alleged unlawfull display of a firearm.

10 According to the female process server, who was the only one that
11 entered the property and/or approached the house, she was afraid
12 and/or scared by the discharge of the firearm, not the possession
13 and/or display of the firearm. This fact is confirmed by the state
14 attorney in the Respondents Brief. See Respondents Brief Page 10 Line
15 15 and 16.

16 17 ARGUMENT 3

18 REMAINING ARGUMENTS IN OPENING BRIEF

19 As for the remaining arguments that were raised in the Lewis County
20 Superior Court but not addressed, and the arguments raised in the
21 Opening Brief, I do not abandon my arguments and/or claims. I
22 re-emphasize all arguments made up to this point.

23 24 CONCLUSION

25 For the reasons contained within this Brief and the Appendix
26 attached hereto, the Honorable Court should grant an Order
27 Withdrawing The Alford Plea.

PETITIONERS / APPELLANTS

REPLY BRIEF

APPENDIX

I

I PAGE

RCW 9.41.270

Weapons apparently capable of producing bodily harm — Unlawful carrying or handling — Penalty — Exceptions.

(1) It shall be unlawful for any person to carry, exhibit, display, or draw any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(2) Any person violating the provisions of subsection (1) above shall be guilty of a gross misdemeanor. If any person is convicted of a violation of subsection (1) of this section, the person shall lose his or her concealed pistol license, if any. The court shall send notice of the revocation to the department of licensing, and the city, town, or county which issued the license.

(3) Subsection (1) of this section shall not apply to or affect the following:

(a) Any act committed by a person while in his or her place of abode or fixed place of business;

(b) Any person who by virtue of his or her office or public employment is vested by law with a duty to preserve public safety, maintain public order, or to make arrests for offenses, while in the performance of such duty;

(c) Any person acting for the purpose of protecting himself or herself against the use of presently threatened unlawful force by another, or for the purpose of protecting another against the use of such unlawful force by a third person;

(d) Any person making or assisting in making a lawful arrest for the commission of a felony; or

(e) Any person engaged in military activities sponsored by the federal or state governments.

[1994 sp.s. c 7 § 426; 1969 c 8 § 1.]

Notes:

Finding -- Intent -- Severability -- 1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date -- 1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

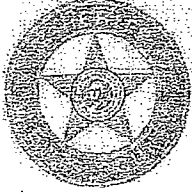
PETITIONERS / APPELLANTS

REPLY BRIEF

APPENDIX

2

10 PAGES



Lewis County Sheriff's Office

Detail Incident Report

Incident Number: 07C15482

Incident: Unlawful Display Weapon

Location: 509 Chandler Rd

Area: LCW PeEll/Doty/Dryad

When Reported: 13:08:56 12/15/07

Occurred Between: 13:03:23 12/15/07

And: 13:03:34 12/15/07

ARRESTEES:

1) Name: WILLIAMS, KEVIN W.
DOB: 04/10/65 Race/Sex: W/M Height: 5'10"
Weight: 145 Hair: BRO Eyes: BLU
Address: 509 Chandler Rd
Chehalis, WA 98532
Home Phone: (360)291-2885 Work Phone: () -

VICTIMS:

1) Name: EDDY, VIRGINIA E.
DOB: 10/03/44 Race/Sex: W/F
Address: 173 Frogner Rd
Chehalis, WA 98532
Home Phone: (360)767-1336 Work Phone: (360)748-6641
Employer:

WITNESSES:

1) Name: EDDY, RODERICK G.
DOB: 06/04/42 Race/Sex: W/M
Address: 173 Frogner Rd
Chehalis, WA 98532
Home Phone: (360)767-1336 Work Phone: () -
Employer:

NARRATIVE:

Name: Shannon S Dep

NARRATIVE: On 12-15-07 at approximately 1308, I, Deputy SHANNON within the boundaries of Lewis County was advised by Lewis County Central Dispatch that Virginia EDDY would be enroute from Chandler Road to the Lewis

County Sheriff's Office to give a statement and file a report in reference to an alleged unlawful display. Virginia EDDY and her husband, Rodrick EDDY, arrived at the Sheriff's Office at approximately 1337.

Both Virginia and Rodrick gave taped statements separately. They stated that they had gone out to 509 Chandler Road, Chehalis, to serve some civil papers for an attorney's office that Virginia EDDY works for. Virginia EDDY stated that after knocking at the door the suspect, Kevin WILLIAMS, appeared on a balcony of the residence and inquired what she was doing. Virginia stated that she had advised Kevin WILLIAMS that she was delivering civil papers and that she would just leave them in a plastic bag attached to the front door of the residence.

Apparently after this conversation Virginia stated that Kevin WILLIAMS appeared with some type of firearm. The firearm was not pointed at Virginia EDDY. Her husband, Rodrick EDDY, was in the vehicle on the roadway. Virginia stated that Kevin WILLIAMS ordered her to remove the papers from the door and place them on a rock. Virginia stated that Kevin WILLIAMS then gave a second order to remove the papers from the rock and to place them on a disabled van on the property.

Virginia stated that her back was turned to Kevin WILLIAMS at the time she heard what she believed to be a gunshot. Virginia stated that she went to the van at which time Kevin WILLIAMS appeared coming out the front door walking up the driveway with some type of firearm in his hand. Again, the barrel was not pointed at anyone.

Rodrick EDDY stated that he did also hear the loud bang, which he stated came from the direction of 509 Chandler Road. He did not see the weapon pointed at anyone. He did state that he observed Kevin WILLIAMS walking down the driveway yelling and screaming at him and his wife to get off his property.

Rodrick EDDY stated that the weapon appeared to be some type of assault rifle. Both Virginia and Rodrick EDDY stated that they were in fear of Kevin WILLIAMS and the fact that he was displaying a firearm. Rodrick EDDY also stated that he had seen Kevin WILLIAMS on the balcony with the same firearm in his hands again not pointed at anyone but simply holding it with the barrel down.

The case plan is to contact Kevin WILLIAMS to get his side of the story and why he would have had a weapon out when these people were delivering civil papers to him. I request that this case be referred back to me. A Supplemental Report will be done after Kevin WILLIAMS is contacted in reference to his behavior.

Deputy Susan Shannon, #217
Lewis County Sheriff's Office
Chehalis, WA

SS: tlm
December 24, 2007

SUPPLEMENTAL NARRATIVE:

STATEMENT OF RODRICK EDDY/S. SHANNON/12-15-07

This is a taped statement with Rodrick, he goes by Rod, Eddy, E-d-d-y. He resides at 173 Frogner Road in Chehalis. This statement's in reference to case number 07C15482. My name's Deputy Susan Shannon with the Lewis County Sheriff's Office. This interview is being conducted at the Lewis County Sheriff's Office. The time now is 1350. The date's the 15th of December, 2007.

Q. Rod, do you understand that this statement is being tape-recorded?

A. Yes, I do.

Q. Is this being done with your permission?

A. Yes, it is.

Q. Um Rod, today um go ahead and start with uh who called the Sheriff's, Sheriff's Office, you or your wife, and tell me uh what happened out on Chandler Road.

A. Well my wife uh, uh did call the Sheriff's Office when we were on the, on Highway 6 with my cell phone after we got to thinking about a little bit. Uh anyhow what happened is this morning we went out to uh 509 Chandler Road to serve a Mr. Kevin Williams with some uh legal papers. Uh I, I'd been there two Saturdays ago to serve him and he wouldn't come down to take em. Told me to take em away. To tell me about his mailbox getting blown up and so forth, which doesn't concern me much. So we went and-

Q. And what kind of papers are these Rod?

A. They're uh legal papers. They were a, uh supposedly papers uh he has been in negotiations to buy this home from a, a lady and uh he's supposed to have been in many, many times in the last couple months to close on the papers and he's never ever showed up. So basically I guess he's living there for nothing and the lady that owns the house wants her house back. So that's what the papers are. So anyhow I haven't been out there for two weeks because of the flooding, figure no use sticking my nose out there. So we went out today and my

wife said, "Well I'll walk down and give em to him cuz he'll probably come out for me maybe cuz he knows you". So that's fine. We parked up on the road and you could see the house. It's about a hundred feet no more down there. She went down and knocked on the door and I, he came out on the balcony again and I assume she identified herself and said she had some papers for him. He wouldn't come down. She said, "Well I'm gonna leave em on the doorknob in a plastic bag" and at first he said, "Okay" and then he uh then he said no he, he uh walked back in. He brought a, a rifle out. It looked like an assault rifle. I'm quite sure it is. And uh she had walked up, she had left em on the door at that time and walked maybe 30 or 40 feet and she shot. Now I couldn't see where he shot. I heard the shot.

Q. So where were you, where when you, where were you at when your wife was at the door?

A. I, I, I was up on the road in, in our car.

Q. Okay. So did you actually hear part of the conversation or is this a conversation your wife told you to place?

A. Uh this is a conversation my wife told me, you know, said that went on with him.

Q. Okay. So you can, you can see that they're having some kind of conversation but you can't hear?

A. Yeah. I, I could see pretty much everything.

Q. Okay. So then where is he when he's having a conversation with your wife? Is he on the porch or up on the window or where's he at?

A. He's up on a balcony. It's a fairly high balcony. It's a second, it's a two-story house. It's, it's quite far up in the air. So he was up there. I mean I, I could hear some words but no you couldn't tell what they were and then the next thing I know boom, there's a shot, and I can see him uh, you know, talking to her and then I seen her turn around and head back down towards the house and uh I, I, you know, from there it's just all hearsay on my part cuz.

Q. Okay. So did you ever, did you ever see him leave the balcony going, and go back in the house or do, was he on the balcony the whole time?

A. Well he did uh, af, after all this was done, he did come out of the house with the assault rifle and, you know, I guess he had told my wife to put the papers uh up on an old van up there close to the road and about that time a, a lady come out of the house with a camera and, and she came right up

towards our car, took a picture of my wife, took a picture of me, car and then he came out of the house with a rifle and walked up within about 40 or 45 feet of us and just was screaming at us to get off his property and, you know, he didn't, he didn't aim the gun at us. He had it just cocked in his arm. But uh, you know, that's pretty much it. We got out of there and left.

Q. So where um, when you see him with the um uh what you're describing as a rifle, Rod, where is the barrel of the gun pointed?

A. Uh it, it, when, when I seen him uh, you know, on the balcony he had it facing down towards the ground. I, you know, I don't know if it was exactly aim, aimed at my wife or not from that distance. I'm not positive. But, but when he come up through the yard, I mean, he didn't stick it up to his shoulder or something and, and point it at us. He just had it cocked in his arm sort of like this, you know, pointing towards the, basically towards the ground.

Q. And where, where again was he or what were you seeing when you heard the shot?

A. Well I was sitting in the, in the front seat of my car and we had a couple teenage boys in the back seat of my car that are, they're foster boys and uh I was, I mean we just heard heard the shot. Boom. And it, you know, it startled me because you know I guess it would startle anybody, you know, and basically that's it. You know. He shot. I don't know if he shot down at her or shot in the air.

Q. So when you heard the boom did you know where he was? Where was he and where was your wife?

A. Uh he was up on the balcony and, and she had walked up from his house. She was probably 30, 40 feet up from his house at that time and I, from what she told me, he just said, "Stop, come back and take those papers off my door" and uh so she did.

Q. Okay. And can you from where you were in your vehicle, were you able to tell from which direction the loud boom came from?

A. Well it, it definitely came from him. I mean uh, you know, but uh other than that it started me. I tell ya. I didn't, I didn't expect that.

Q. So you, you were, you're sure that the boom came from the direction of where this man was standing on the balcony?

A. Yes, I'm very certain.

Q. Okay.

A. Very certain.

Q. And then after your wife puts the paper on the dilapidated van, what happens?

A. Uh after that uh she put it on the van. Uh the lady that was there was up, actually right in front of my car at that time and I was parked on the, on Chandler Road and uh she was snapping pictures and at that, at that time he'd also came out of the house and he was up 40, 45 feet from us just standing in the yard with the rifle in hand just yelling at us to get the heck off his property and uh-

Q. Did he say, did he say get the heck or did he use other words?

A. Oh he I, I, I, I mean he was, he was irate. I mean, you know, I told him, "Hey, you know I'm a licensed service (inaudible) and so forth" and he said, "I don't care what you are and, you know" and.

Q. And so what was, what was going through your mind or how did you feel uh emotionally, I guess, when you saw the man with the rifle?

A. Well you know I was scared, you know. I mean, you know, I, I told my wife two weeks before this that this guy was, I felt he was weird. I don't know what's going on at this house but uh you know I told her that I would never go back there when it was dark for sure you know cuz I don't know the man but just the way he talks and mumbles on (inaudible) you know, I'm not sure he's uh stable. That's all I can say.

Q. Okay. This'll uh end the statement with Rodrick Eddy. It's still the 15th of December, 2007, and it's 1357.

Deputy Susan Shannon, #217
Lewis County Sheriff's Office
Chehalis, WA

SS: tlm
December 24, 2007

SUPPLEMENTAL NARRATIVE:

STATEMENT OF VIRGINIA EDDY/S. SHANNON/12-15-07

This is a taped statement with Virginia Eddy, E-d-d-y. She resides at 173 Frogner Road in Chehalis. This statement's in reference to case number 07C15482. My name's Deputy Susan Shannon with the Lewis County Sheriff's

Office. This interview is being conducted at the Lewis County Sheriff's Office. The time now is 1359. The date's the 15th of December, 2007.

Q. Virginia, do you understand that this statement is being tape-recorded?

A. Yes, I do.

Q. Is this being done with your permission?

A. Yes.

Q. Virginia, today you had gone out to uh 509 Chan, Chandler Road with your husband uh Rodrick, who goes by Rod Eddy, um to serve a civil paper. Could you go ahead and tell me who you were going to service that on and uh tell me what happened while you were out there?

A. I was gonna serve a Kevin Williams with a Summons and Complaint and I walked down the driveway. There was a gate that was closed but there were paths on both sides. I just walked through one of the paths. I knocked on the door and he came to a balcony up above me and I said, "Are you Kevin Williams?" He said, "Who are you?" I said, "My name is Jenny" and I said, "I have some papers here for you" and he started to say something about get off my property. I said, "Well I'll tell ya, I'll just put em on the door". He started saying something about a mailbox being blown up and how he lost his hearing and all these things and I said, "Well", I said, "I've just got papers. I can show ya." And he and I put em on the door and he was rambling on and I just started walking and I had gone maybe 25 to 30 feet and a gunshot was fired. It was a rifle. I could tell and um so I just took about two steps and stopped and he started yelling at me to come back and get the papers and I was afraid that if I didn't that he would shoot at me again. So I went back and took the papers. He told me to put em on the rock. I said okay. So I walked over towards the, picked up the papers, walked to the rock and he said, "no, no don't leave em there, put em up on my van". It was an old blue wrecked van. So I said, "okay, no problem". A girl comes flying out named Melissa and she's snapping my pictures and taking, he's yelling at us to take the picture of the license plate and I says, "There's no problem". I said, "We're just serving some papers." And I put the papers in the van with a mug, clear mug, looked like some left over coffee in it and I sat it on top to secure the papers and I just told her, I said, "Hey, we're leaving. Not gonna bother ya" and he's running out with a rifle in his hand at that point and I just got in the car.

Q. So where's the barrel of the rifle pointed?

A. I couldn't see the barrel of the rifle. My back was turned. I was walking back towards my car.

Q. When you were in your car was he still walking towards your car or had he stopped in the yard?

A. I believe he was walking up the driveway. I don't know how far up the driveway he was but she was right there by the car.

Q. And at that point did he still have the rifle?

A. He had the rifle but I, to be honest with ya, I was just like lets go.

Q. So when you um, when you were hanging the papers on the door um Virginia, where did he first contact you? Did he come to the door or was he on a balcony or somewhere else in the house or through a window? When, how did he make first contact with you?

A. Uh on the balcony. He opened up, I think it was a sliding door, and just and I said, "Are you Kevin Williams?" That was the first contact. He stood there. He didn't have anything in his hands at that point and he said, "I, I don't want em". I said, "Well I'll just leave em on your door". I had a plastic bag with the papers in it and I put em over the handle, the plastic bag and I started to walk away.

Q. And that's when you hear a shot?

A. I was about 25 feet away. My back was to him and there was a shot fired. It was close but I, I'm su, I think he shot into the ground but I don't know.

Q. So did you ever turn, did you ever turn around or you kept walking straight towards the van?

A. No, I turned around and got the papers off the door cuz he told me to. I was afraid if I didn't he'd shoot me so.

Q. And is that when you see the rifle in his hands?

A. Yeah. I kind of just glanced up very quickly. I just said, "Hey, I'm taking the papers. I'm put, I'm putting on the rock."

Q. Okay. And that's where you put them? On the rock? And then you put them on the van?

A. And then he told me no, no, no, no, don't leave em there. I said, "Okay. I'll put up at the van". That's where he told me to put em. So I walked up there and I started to put em there and he started screaming at me, "Don't you leave me there". I said, I sat em there and the girl was right behind me

taking my picture and ran up to the car and he came out of the house so.

Q. Okay. And you think this girl's name is Melissa?

A. He called her Melissa about three times.

Q. Okay. And um basically Virginia, tell me how you felt or perhaps what kind of emotional state you were in when you heard what sounded like a gunshot and when you um saw this person or believed this person was in possession of a firearm.

A. Well I was afraid enough that I went back to the door and got the papers cuz he told me to cuz I was afraid if he shot once that he might shoot and hit me. I mean he'd have to be a pretty bad shot not to get me at that close range so. Obviously I think the first time he shot away from me but I, I wasn't going to take a chance so that's why I picked up the papers like he told me but I, I didn't pick em up after I put em in the van. I just kept walking and I thought at this point I'm, you know, he was running downstairs, running down, cuz he had to go down a flight of stairs so.

Q. Would you like to add anything else to your statement Virginia?

A. No, I think that's pretty well it.

Q. This'll end the statement with Virginia Eddy. It's still the 15th of December, 2007, and it's 1404.

Deputy Susan Shannon, #217
Lewis County Sheriff's Office
Chehalis, WA

SS: tlm
December 24, 2007

SUPPLEMENTAL NARRATIVE:

SUPPLEMENTAL/S. SHANNON/12-22-07

NARRATIVE: Two attempts, one by me and one by Deputy Tim ENGLISH, have been made to contact Kevin WILLIAMS at his home at 509 Chandler Road with negative results. Additionally, I attempted phone contact with Kevin WILLIAMS and the number listed for him in Spillman is disconnected.

As of 12-22-07 contact has not been made with Kevin WILLIAMS. He is being referred to the Lewis County Prosecutor's Office for Unlawful Display of a Firearm. This case has been cleared by arrest referral and can be closed.

Deputy Susan Shannon, #217
Lewis County Sheriff's Office
Chehalis, WA

SS: tlm
December 24, 2007

CERTIFICATE OF SERVICE

FILED
COURT OF APPEALS
DIVISION II

2015 OCT 26 AM 9:31

STATE OF AMERICA
STATE OF WASHINGTON

BY I Kevin
DEPUTY a true and

Under penalty of perjury under the laws of the United States
as well as the laws of the state(s) of California
Wayne Williams hereby declare that on October 19 2015
correct copy of the foregoing: 30 Page: Petitioners / Appellants Reply Brief

1 Page: Certificate of Service

was deposited in the internal mailing system of the following institution:
Terminal Island FCI which is physically located at the following address:
1299 Seaside Blvd Terminal Island California 90733

The above mentioned papers and/or filings were placed in an envelope
and/or package with postage prepaid and were properly addressed to the
individual, entity, and/or agency listed below:

- | | |
|--|--|
| 1) <u>Clerk Of The Court</u> | 2) <u>Eric Wantuck Eisenberg</u> |
| <u>Washington State Court Of Appeals</u> | <u>Lewis County Prosecuting Attorneys Office</u> |
| <u>Division Two</u> | <u>345 W. Main Street</u> |
| <u>950 Broadway</u> | <u>2nd Floor</u> |
| <u>Suite 300</u> | <u>Chehalis Washington 98532</u> |
| <u>Tacoma Washington 98402</u> | |
| | |
| | |
| | |
| | |

These papers and/or filings are deemed filed on the date that they were
provided to an institutional staff member for mailing.

DATED: October 19, 2015

SIGNED:

Kevin Wayne Williams

KEVIN WAYNE WILLIAMS